

SUPPLEMENTARY INFORMATION:**Public Comment Procedures**

If you wish to comment, you may submit your comments by any one of several methods listed in the **ADDRESSES** section above. Please make your comments as specific as possible by confining them to issues directly related to the content of the proposed rule, and explain the basis for your comments. The comments and recommendations that will be most useful and likely to influence agency decisions are:

1. Those supported by quantitative information or studies; and
2. Those that include citations to, and analyses of, the applicable laws and regulations.

The BLM is not obligated to consider or include in the Administrative Record for the rule comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES** during regular hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Background

The proposed rule was published on February 25, 2016 (81 FR 9674), with a 60-day comment period closing on April 25, 2016. Since publication, the BLM has received requests to extend the comment period on the proposed rule. After considering these requests, the BLM determined that it is appropriate to grant the requests to extend the comment period, and the BLM is hereby extending the comment period on the rule for 30 days. The closing date of the extended comment period is May 25, 2016.

Janice M. Schneider,
Assistant Secretary, Land and Minerals Management.

[FR Doc. 2016-09439 Filed 4-21-16; 8:45 am]

BILLING CODE 4310-84-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**48 CFR Parts 1816 and 1852**

RIN 2700-AE31

NASA Federal Acquisition Regulation Supplement: Clarification of Award Fee Evaluations and Payments (NFS Case 2016-N008)

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is proposing to amend the NASA Federal Acquisition Regulation Supplement (NFS) to clarify NASA's award fee process by incorporating terms used in award fee contracting; guidance relative to final award fee evaluations; release of source selection information; and the calculation of the provisional award fee payment percentage in NASA end-item award fee contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 21, 2016, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by NFS Case 2016-N008, using any of the following methods:

• *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "NFS Case 2016-N008" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "NFS Case 2016-N008." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "NFS Case 2016-N008" on your attached document.

• *Email:* william.roets-1@nasa.gov. Include NFS Case 2016-N008 in the subject line of the message.

• *Fax:* (202) 358-3082.

• *Mail:* NASA Headquarters (HQ), Office of Procurement, Contract and Grant Policy Division, Attn: Mr. William Roets, Suite 5M18, 300 E Street SW., Washington, DC 20546-0001.

FOR FURTHER INFORMATION CONTACT: Mr. William Roets, NASA HQ, Office of Procurement, Contract and Grant Policy Division, Suite 5M18, 300 E Street SW., Washington, DC 20456-0001. Telephone 202-358-4483; facsimile 202-358-3082.

SUPPLEMENTARY INFORMATION:**I. Background**

NASA is proposing to revise the NFS to clarify NASA's award fee process. As

part of the NASA Office of Procurement internal reviews and the NASA Office of the Inspector General (OIG) audit entitled "NASA's Use of Award Fee Contracts," Report Number IG-14-003, NASA is implementing revisions to NFS 1816.4 and 1852.216-77 to clarify NASA's award fee evaluation and payment processes.

II. Discussion

NASA is proposing the following revisions to clarify NASA's award fee process:

- Add new definitions section at NFS 1816.001. Definitions for Earned Award Fee and Unearned Award Fee are being added to provide clarity and consistency in how these terms are utilized in NASA's award fee evaluation process.
- Revise NFS 1816.405-273(b) to provide further management review for final award fee determinations that meet certain criteria as outlined in this rule's revised NFS text.
- Revise NFS 1816.405-273(c) to provide clarification regarding the release of source selection information that is included in the Contractor Performance Assessment Reporting System (CPARS).
- Revise NFS 1816.405-276(b) and 1852.216-77(c)(3) to clarify how provisional award fee payments are calculated in NASA end-item award fee contracts. The current NFS text describes this calculation as "limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score" and yet does not address how the first award fee evaluation period should be handled. To address this issue, NFS is being revised to read: "limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score, except for the first evaluation period, which is limited to 80 percent of the available award fee for that evaluation period."
- In addition, since the FAR removed clause 52.216-13 in Federal Acquisition Circular (FAC) 2005-17, NASA is removing references to this clause contained in NFS 1816.307, 1816.307-70, and 1852.216-89.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the guidance largely clarifies NASA's award fee evaluation and payment process, which should result in a more consistent use and administration of award fees within NASA. These revisions should provide all entities, both large and small, with a positive benefit. However, an initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

An analysis of data in the Federal Procurement Data System (FPDS) revealed that award fee contracts are primarily awarded to large businesses with large dollar contracts. An analysis of FPDS data over the past three years (Fiscal Year (FY)2013 through FY2015) showed that an average of 157 award fee contracts were awarded at NASA per year, of which 33 (approximately 20%) were awarded to small businesses. Thus, the application of the award fee revisions contained in this rule do not apply to a substantial number of small entities.

The rule imposes no reporting, recordkeeping, or other information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules, and there are no known significant alternatives to the rule.

NASA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties shall submit such comments separately and should cite 5 U.S.C. 610 (NFS Case 2016–N008), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 1816 and 1852

Government procurement.

Manuel Quinones,

NASA FAR Supplement Manager.

Accordingly, 48 CFR parts 1816 and 1852 are proposed to be amended as follows:

- 1. The authority citation for parts 1816 and 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

PART 1816—TYPES OF CONTRACTS

- 2. Add section 1816.001 to read as follows:

1816.001 Definitions.

As used in this part—
“Earned Award Fee” means the payment of the full amount of an award fee evaluation period's score/rating.
“Unearned Award Fee” means the difference between the available award fee pool amount for a given award fee evaluation period less the contractor's earned award fee amount for that same evaluation period.

* * * * *

1816.307 [Amended]

- 3. Amend section 1816.307 by removing paragraph (g)(1) in its entirety.
- 4. Revise section 1816.307–70, in paragraph (f), to read as follows:

1816.307–70 NASA contract clauses.

* * * * *

(f) When FAR clause 52.216–7, Allowable Cost and Payment, is included in the contract, as prescribed at FAR 16.307(a), the contracting officer should include the clause at 1852.216–89, Assignment and Release Forms.

* * * * *

- 5. Amend section 1816.405–273 by revising paragraphs (b) and (c) to read as follows:

1816.405–273 Award fee evaluations.

* * * * *

(b) *End Item Contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's

assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.405–276(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. However, if the final award fee adjectival rating is higher or lower than the average adjectival rating of all the interim award fee periods, or if the final award fee score is eight base percentage points higher or lower than the average award fee score of all interim award fee periods (e.g. 80% to 88%), then the Head of the Contracting Activity (HCA) or the Deputy Chief Acquisition Officer (if the HCA is the Fee Determination Official) shall review and concur in the final award fee determination. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as “Source Selection Information—see FAR 3.104”. See FAR 42.1503(h) regarding the requirements for releasing Source Selection Information included in the Contractor Performance Assessment Reporting System (CPARS).

* * * * *

- 6. Amend section 1816.405–276 by revising the last sentence of paragraph (b) to read as follows:

1816.405–276 Award fee payments and limitations.

* * * * *

(b) * * * For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score, except for the first evaluation period which is limited to 80 percent of the available award fee for that evaluation period.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 7. Amend section 1852.216–77 by revising the date of the clause and paragraph (c)(3). The revised text reads as follows:

1852.216–77 Award Fee for End Item Contracts.

* * * * *

Award Fee for End Item Contracts
(Date)

* * * * *

(c)(1) * * *

(3) Provisional award fee payments will [insert “not” if applicable] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly) basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see [insert applicable cite]), except for the first evaluation period which is limited to [insert a percent not to exceed 80 percent] of the available award fee for that evaluation period. Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is “poor/unsatisfactory,” the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance).

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■ 8. Amend section 1852.216–89 by revising the date of the clause, and the first sentence of the paragraph to read as follows:

1852.216–89 Assignment and Release Forms.

* * * * *

Assignment and Release Forms ([Date])

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216–7, Allowable Cost and Payment:

* * * * *

[FR Doc. 2016–09356 Filed 4–21–16; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 160104009–6314–01]

RIN 0648–BF65

International Fisheries; Tuna and Tuna-Like Species in the Eastern Pacific Ocean; Fishing Restrictions Regarding Mobulid Rays

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Tuna Conventions Act to implement Resolution C–15–04 (*Resolution on the Conservation of Mobulid Rays Caught in Association with Fisheries in the IATTC Convention Area*) of the Inter-American Tropical Tuna Commission (IATTC). Per the Resolution, this rule would prohibit any part or whole carcass of mobulid rays (*i.e.*, the family Mobulidae, which includes manta rays (*Manta spp.*) and devil rays (*Mobula spp.*) caught in the IATTC Convention Area from being retained on board, transshipped, landed, stored, sold, or offered for sale. In accordance with the Resolution, the proposed rule also includes requirements for release of mobulid rays. This proposed rule would also revise related codified text for consistency with the recent amendments to the Tuna Conventions Act. This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by May 23, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0035, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0035>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Rachael Wadsworth, NMFS West Coast Region Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier

“NOAA–NMFS–2016–0035” in the comments.

Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA–NMFS–2016–0035 or by contacting the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115–0070, or RegionalAdministrator.WCRHMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Rachael Wadsworth, NMFS, West Coast Region, 562–980–4036.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission. In 2003, the IATTC adopted the Convention for the Strengthening of the IATTC Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention). The Antigua Convention entered into force in 2010. The United States acceded to the Antigua Convention on February 24, 2016. The full text of the Antigua Convention is available at: https://www.iattc.org/PDFFiles2/Antigua_Convention_Jun_2003.pdf.

The IATTC consists of 21 member nations and four cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of